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SEP 16 1999

**Federal Communications Commission
Office of Secretary**

September 14, 1999

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Magalie Roman Salas
Secretary, Room TW-A325
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
Washington, DC 20554

Re: In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170

Dear Ms. Salas:

Enclosed herewith for filing are the original and four (4) copies of MCI WorldCom's Reply Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI WorldCom Reply Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Don Sussman

Enclosure
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SEP 16 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of Secretary

In the Matter of:

Truth-in-Billing
and
Billing Format

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CC Docket No. 98-170

MCI WORLDCOM, INC. REPLY COMMENTS

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September 14, 1999

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Summary

MCI WorldCom, Inc. (MCI WorldCom), pursuant to Public Notice released August 20, 1999, responds to petitions for reconsideration and clarification filed by AT&T, USTA, SBC, the National Telephone Cooperative Association (NTCA), and US West in the above-captioned proceeding on July 26, 1999. MCI WorldCom urges the Commission to (1) determine that standardized labels for different charges would contribute to consumer confusion, and is therefore not in the public interest; (2) find that the requirement that carriers must identify "deniable" and "nondeniable" charges on consumer invoices is too burdensome to implement; (3) clarify that its new truth-in-billing requirements do not apply to custom and complex billing for business customers; and (4) define "new service provider" as a changed or new presubscribed service provider.

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MCI WORLDCOM, INC. REPLY COMMENTS

I. Introduction

In the Truth-in-Billing Order, the Commission adopted rules and requirements to ensure that carriers' charges, practices, classifications and regulations for and in connection with interstate services are just and reasonable, pursuant to Section 201(b) of the Communications Act.¹ These rules require (1) that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers; (2) that bills contain full and non-misleading descriptions of charges that appear therein; and (3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges on, the bill.²

¹ In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, released May 11, 1999 (Truth-in-Billing Order).

² Id at ¶15

MCI WorldCom, Inc. (MCI WorldCom), pursuant to Public Notice released August 20, 1999, responds to petitions for reconsideration and clarification filed by AT&T, USTA, SBC, the National Telephone Cooperative Association (NTCA), and US West in the above-captioned proceeding on July 26, 1999. MCI WorldCom urges the Commission to (1) determine that standardized labels for different charges would contribute to consumer confusion, and is therefore not in the public interest; (2) find that the requirement that carriers must identify "deniable" and "nondeniable" charges on consumer invoices is too burdensome to implement; (3) clarify that its new truth-in-billing requirements do not apply to custom and complex billing for business customers; and (4) define "new service provider" as a changed or new presubscribed service provider.

II. The Commission Should Abandon its Plan to Adopt Standardized Labels

In its Truth-in-Billing Order, the Commission repeatedly recognizes that flexibility in carrier communications with customers is a necessary ingredient in the development of strong competitive markets.³ Yet paradoxically, the Commission concludes in that same order that

³ For example, the Commission's decision "to adopt broad, binding principles, rather than detailed, comprehensive rules, reflects a recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner." Truth-in-Billing Order at ¶10. Similarly, "[i]n adopting a provider-based guideline and affording wide latitude to determine the most efficient way to convey the service provider information, [the Commission has] balanced consumers' need for clear, logical, and easily understood charges against concerns that rigid formatting and disclosure requirements would inhibit innovation and greatly increase carrier costs." Id. at ¶36. Additionally, the Commission specifically declined to take a prescriptive approach as to how carriers may recover their costs because the Commission prefers "to afford carriers the freedom to respond to consumer market forces individually, and consider whether to include [line item] charges as part of the their rates, or to list charges in separate line

carriers must use standardized labels to refer to certain charges relating to federal regulatory action.⁴ The Commission's reasoning is that standardized labeling of certain line items will facilitate comparison shopping and reduce customer confusion. As AT&T and US West correctly argue in their petitions, the Commission's decision to require standardized labels of line item charges related to federal regulatory action: 1) is inconsistent with the flexible guideline-based approach the Commission adopted in its order; 2) is unnecessary in light of the Commission's other truth in billing requirements; 3) does not promote educated comparison shopping among consumers of telecommunications services; and 4) generates additional costs and technical issues for carriers.⁵

AT&T correctly argues that the Commission's decision to require standardized labels is at odds with its decision (in the same order) to afford carriers the flexibility to recover their costs and communicate with their customers in the most efficient, and competitive, fashion.⁶ Carriers should be required to communicate clearly, in a truthful manner, with customers, as is required by the Commission's truth-in-billing guidelines. However, carriers need the flexibility to label their charges in a way that best describes that particular carrier's rates and rate structure, to that particular carrier's customer base. A one-size-fits-all policy is not applicable to a vibrantly competitive marketplace, such as the interexchange market, and will result in increased customer

items." Id. at ¶53.

⁴ Id. at ¶49.

⁵ AT&T Petition at 2-3. US West Petition at 16-18.

⁶ AT&T Petition at 2.

confusion and less than accurate descriptions on customer invoices.

Standardized labeling of dissimilar charges will actually make it more difficult for consumers to comparison shop, and would increase customer confusion.⁷ Carriers structure their rates differently, and therefore, recover their costs differently. Standardized labels for charges that do not reflect the same rate structure or cost recovery mechanism would not assist customers in rational comparison shopping.

Moreover, even if the Commission's concern -- that customers would not be protected sufficiently by competition alone -- had merit, AT&T correctly argues that standardized labeling of line items is not necessary in light of the Commission's other billing description guidelines delineated in the Truth-in-Billing Order.⁸ The Commission's determination that "descriptions that convey ambiguous or vague information....would not conform to [its truth-in-billing] guidelines," adequately protects customers from misleading or vague line item labels. MCI WorldCom agrees with the Commission that services included on the telephone bill should be accompanied by a brief, clear, plain language description of the service rendered, and that the description of the charge should be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received.⁹

⁷ AT&T Petition at 3, US West Petition at 16-17.

⁸ AT&T Petition at 3.

⁹ Id. at ¶38

The Commission also erroneously concludes in its order that consumers evaluate, or should evaluate, the competitiveness of a telephone carrier's services based on a comparison of only one part of the bills -- line charges. Consumer organizations and regulators for years have taken the position that the only meaningful comparison to be made is the customer's total bill based on that particular customer's calling pattern.¹⁰

No rational relationship exists between standardized labeling of line charges and the Commission's stated goal in the Truth-in-Billing Order. If the Commission is to require expensive and cumbersome labeling changes, it has the legal obligation to demonstrate that its proposed regulation is rationally related to its goal of fostering comparison shopping. This it cannot do. The Commission should abandon its plan to adopt standardized labels.

The Commission also needs to carefully consider whether a rule requiring standardized labeling of certain line items can withstand judicial scrutiny under Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980). The 10th Circuit has recently overturned

¹⁰ As MCI WorldCom stated in its comments filed July 9, 1999 in the instant proceeding, Commissioner Ness has urged consumers to keep their eye on the "bottom line" of the bill, rather than on individual line charges: My recommendation is to keep your eyes on the bottom line of the bill. Don't get too upset by a single line-item if the overall bill is the same or smaller than it was. On the whole, the vast majority of consumers will benefit from the changes that are currently under way. Letter from Commissioner Ness addressing Telephone rates and Line Charges, FCC Web Cite "Ness Forum." Also, The Telecommunications Research and Action Center (TRAC) has repeatedly urged consumers to comparison shop among telecommunications carriers to obtain the best value for that particular customer's needs. TRAC urges consumers to ask "How much is it going to cost me at the end of the month for long distance service with this company and the plan that I use?" It is the total bill at the end of the month that is important to customers when comparison shopping, not the charge for particular components of the bill. See MCI WorldCom Comments at 7.

the Commission's Customer Proprietary Network Information (CPNI) rules using a Central Hudson analysis.¹¹ While MCI WorldCom disagrees with the opinion of the majority in that case, it appears that under either the majority opinion or the dissenting opinion in that case, there exists a substantial question of whether a standardized labeling rule could survive court review. Central Hudson requires that lawful, non-misleading commercial speech may only be regulated if the government can demonstrate a substantial state interest in regulating the speech, that the regulation directly advances the governmental interest, and that the regulation is as narrowly tailored as possible to serve that interest.¹² In the CPNI court's view, not even the Congressionally-specified interest in protecting customer privacy was enough to prove a substantial interest in the absence of an agency record demonstrating what explicit harms would occur to consumers.¹³ The dissenting judge found, however, that the CPNI rules regulate only "nonexpressive activity" (e.g., how a carrier must secure permission to use CPNI) rather than the particular expression that a carrier must use. But assuming arguendo that the case should be analyzed as a First Amendment issue under Central Hudson, the dissent finds that the specific statutory language of section 222 of the Act, and its legislative history, demonstrate that there is a substantial state interest in regulating customer privacy and in promoting competition.¹⁴

¹¹ US West, Inc. v. Federal Communications Commission, 182 F. 3d 1224 (10thCir. 1999).

¹²Central Hudson 447 U.S. at 564-65.

¹³ The majority expressed "doubts" about whether information such as to whom, where, and when a customer places a call, along with types of services a customer subscribes to, warrants protection. US West, 182 F. 3d at 1235.

¹⁴ US West, 182 F. 3d at 1244 (Briscoe, J. Dissenting).

If the CPNI majority could not find a substantial state interest in protection of privacy and promotion of competition in the face of a specific statutory directive to implement CPNI rules, there appears to be little reason to conclude that a rule requiring standardized labeling -- based on no explicit statutory authority, and supported by a record which suggests a standardized label rule would create customer confusion -- would be lawful.

Applying the dissent's formulation of First Amendment analysis (which we think is the better view), governmental interest asserted in the standardized labeling of certain charges is the promotion of comparison shopping by consumers. This hardly seems to arise to the level of a substantial interest required by Central Hudson. Alternatively, if the asserted interest is to create unambiguous billing in order to minimize complaints that the government must process and to discourage fraud against consumers, the regulation also fails. These are interests that are already supported by the government's decision to create competitive telecommunications markets where clear and unambiguous bills are necessary to compete,¹⁵ and the new Truth-in-Billing "guideline" that carrier bills "contain full and nonmisleading descriptions of charges." To these "suspenders," the Commission is adding the "belt" of a standardized labeling rule, raising the question of whether its belt and suspenders is as narrowly tailored as possible to serve the asserted governmental interest. In MCI WorldCom's view, standardized labeling cannot survive the application of a Central Hudson test.

¹⁵ Detariffing of Billing and Collection Services, Report and Order, CC Docket No. 85-88, FCC 2d 1150 (1986).

III. The Commission Should Eliminate its Requirement That Carriers Must Identify "Deniable" and "Nondeniable" Charges on Consumer Invoices

In the Truth-in-Billing Order, the Commission requires carriers to make clear when non-payment for service would result in the termination of the consumer's basic local service, where carriers include in a single bill both deniable and nondeniable charges.¹⁶ The Commission determined that its authority to mandate this requirement -- as well as the truth-in-billing principles generally, derive from both §201(b) and §258 of the Act.¹⁷

As an initial matter, MCI WorldCom agrees with US West that the Commission's requirement that carriers make clear when non-payment for service would result in the termination of the consumer's basic local service reaches beyond the Commission's jurisdiction.¹⁸

While it is clear that the Commission has authority under §258 to take steps needed to reduce and prevent unauthorized conversions in the interstate and intrastate telecommunications markets, the Commission has not identified, and we believe that it cannot identify, any linkage

¹⁶ Truth-in-Billing Order at ¶¶44-46. Deniable charges are those charges that, if unpaid, could result in the termination of local exchange or long distance telephone service. Non-deniable charges are those charges for which basic communications services would not be terminated for non-payment.

¹⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (Act).

¹⁸ US West Petition at 10-11. The deniability rule is clearly a "regulation ... in connection with intrastate communication service" because it dictates the manner in which charges for local service must be billed. See Texas Office of Public Utility Counsel v. FCC, ___ F.3d ___, 1999 WL 556461, *14 (5th Cir. 1999). Since the 1996 Act does not apply to billing for telephone exchange service, the jurisdictional fence in section 152(b) does not allow this exercise of ancillary jurisdiction by the Commission. See AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721, 731(1999).

between a customer knowing which charges, if not paid, will result in termination of basic service and the customer's ability to prevent or detect unauthorized conversions.¹⁹ Identifying which charges would result in termination of basic service if not paid conveys no meaningful information to the customer that would help determine if the carrier providing a service is the carrier which the customer selected, or whether an unauthorized conversion has occurred.²⁰ The Commission has failed to demonstrate the nexus between its requirement that carriers make clear when non-payment for service would result in the termination of the consumer's basic local service, and its goal, and Congress' goal, of protecting consumers from unauthorized conversions.²¹

In its petition, AT&T requests that the Commission reconsider its rule on deniability for business customers and permit carriers to utilize alternative means (such as web-based solutions) for providing business customers with information regarding whether payment of billed charges may affect their local exchange service.²² AT&T argues that the requested modification would

¹⁹ MCI WorldCom also believes the Commission should reconsider and eliminate its requirement that carriers identify which charges if not paid will result in termination of basic service because such a requirement will lead to an increase in industry fraud, uncollectables, and rapid change of carriers. The requirement also is not competitively neutral, as it disproportionately affects long distance carriers who overwhelmingly rely on incumbent local exchange carrier billing, without giving any practical opportunity for long distance carriers to make alternative billing arrangements.

²⁰ US West Petition at 13.

²¹ Nor can the citation contained in its ordering clause to section 4(i) save the Commission's rationale here, since 201(b) and 258 do not permit the Commission to promulgate a "deniability" rule with respect to local service.

²² AT&T Petition at 7.

do no harm to the intent of the Commission's rule that such customers have access to information concerning the "deniability" status of certain charges, but merely would permit carriers to accomplish the Commission's objectives in a more practical and cost-effective fashion.²³ The Commission should not limit its reconsideration of the "deniable/nondeniable" rule to its application to large business customers, as is requested by AT&T. Rather, for the above-mentioned reasons, it should eliminate, in its entirety, section 64.2001(c) of the Commission's rules, which requires that carriers must identify "deniable" and "nondeniable" charges on consumer invoices.

The Commission should not, however, dismiss AT&T's argument that complex arms-length business transactions are indeed different than typical mass market billing transactions, and appropriately, should be treated differently.²⁴ The Commission should recognize these differences and clarify that its new truth-in-billing requirements do not apply to custom and complex billing for business customers. The business customers involved in such billing arrangements are typically large, sophisticated telecommunications users that need special billing formats designed to enable them to validate, allocate, and pay their telecommunications billings.²⁵ Such customers generally have elaborative systems and procedures to audit and validate their bills, and do not need or want the protection offered by the Commission's new

²³ AT&T Petition at 4.

²⁴ AT&T Petition at 3-6.

²⁵ Id.

rules.²⁶ Forced implementation of the Commission's requirements in custom and complex billing arrangements would inflate the cost of serving these customers, and impair the ability of carriers to meet the billing needs of these customers. Such a clarification is in the public interest because it would permit carriers to develop invoices and customer communications that meet the specific demands of certain customers. In such instances, there would be no valid concern that invoices or messages may not be clear and understandable since their design would be at the behest of the customer.²⁷

IV. Commission Requirements Aimed at Preventing Unauthorized Conversions Should Be Competitively Neutral, Economically Efficient, and Implementable

In the Truth-in-Billing Order, the Commission adopted the principle that telephone bills must be clearly organized and highlight new service provider information. While the Commission did not mandate how carriers organize their customer invoices, it required that carriers clearly and conspicuously identify on the invoice all service providers billing in the current month that did not bill for services on the previous billing statement.²⁸ The Commission reasoned that clear identification of new service providers will improve consumers' ability to

²⁶ Id.

²⁷ Similarly, carriers should not be found liable where the billing entity has seized control of invoice labeling and messaging. Given the overwhelming control that ILECs have over billing, the Commission should clarify that the carrier who provides service can define invoice messaging and labeling, and the carrier who is sending a bill on a contractual basis cannot interfere with messaging or labeling that is otherwise lawful. Carriers should not be found liable for certain billing arrangements that are not under their control as long as they have made, and can demonstrate that they have made, a good faith effort to comply.

²⁸ Truth-in-Billing Order at ¶33.

detect slamming because, currently, telephone bills do not always clearly show when there has been a change in presubscribed carriers.²⁹

As MCI WorldCom has repeatedly argued,³⁰ the most efficient way to mitigate unauthorized conversions is a neutral, industry-funded, Third Party Administrator (TPA), as proposed in the Joint Petition, combined with third party verification methods employed by companies such as MCI WorldCom.³¹ The TPA proposed in the Joint Petition, when combined with such third party verification methods, is consistent with Section 258 and offers customers protection from unauthorized carrier changes in a straight forward manner, and for the first time, would give consumers, government agencies, and carriers a single point of contact that will: (1) quickly resolve customer allegations of unauthorized conversions; (2) independently determine a carrier's compliance with the Commission's verification procedures; (3) honor Commission's requirements that customers be compensated for their inconvenience; and (4) administer carrier-to-carrier liability.

However, if the Commission determines that carriers must implement section

²⁹ Id.

³⁰ See, for example, In the a Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, filed July 26, 1999.

³¹ See In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Joint Petition For Waiver, filed By MCI WorldCom, Inc. on behalf of MCI WorldCom, Inc, AT&T Corp., the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Communications, Frontier Corporation, and Qwest Communication Corporation on March 30, 1999 (Joint Petition).

64.2001(a)(2) of its rules, which states that telephone bills must include "notification to the customer that a new provider has begun providing service," the Commission should not define "new service provider" in terms of when the service provider last submitted charges to be billed, as is propose by USTA and SBC.³² Such a modification does not improve the customer's ability to detect unauthorized conversions. Instead, the Commission should define "new service provider" as a changed or new presubscribed service provider. Section 64.2001(a)(2) of the Commission's rules also should not apply to "dial around," casual billed, or operator services, since the providers of these services do not constitute a new provider within the meaning of the rule.³³ Providing such information regarding dial around, casual billed or operator service providers is not necessary to help control unauthorized conversions since (a) use of dial around, casual billed or operator service providers do not change the customer's presubscribed carrier,³⁴ and (b) the customer authorized the per call dial around service by dialing the additional digits.³⁵

Regardless of the definition of "new service provider," the Commission should clarify

³² USTA at 6-7, SBC at 1.

³³ Sprint Petition at 13.

³⁴ While a customer may change his or her preferred carrier for local, interLATA toll, or intraLATA toll during a billing cycle, the selection of a carrier on a call-by-call basis does not commit the customer to a PIC change selection of a calling plan, the risk that the customer inadvertently is billed on the carrier's basic schedule, or a PIC change fee.

³⁵ Also, providing the name of every "dial-around," casual billed, pay-per call, and operator service on the bill which did not appear on the bill in the prior month would substantially increase the expense of providing telecommunications services since most invoices would need to be redesigned and expanded.

that it is a LEC responsibility to provide the information regarding new presubscribed service providers to customers. Information on presubscribed carriers is maintained in the LEC switches, and given that IXC's do not have real-time access to such information, it would not be possible for IXC's to accurately provide this information to customers on a timely basis.

V. Service Providers Should Not Be Liable for Implementation of Truth-in-Billing Rules in Instances where Billing Entities Are Exempt

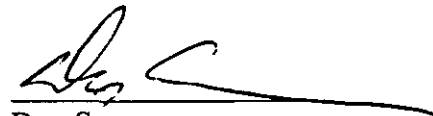
USTA and the National Telephone Cooperative Association (NTCA) argue that the Commission's truth-in-billing rules should not apply to small- to medium-size carriers.³⁶ USTA and NTCA argue that the time and cost to small and medium carriers of developing and modifying billing systems needed to implement the truth-in-billing rules far outweigh the associated public benefits. Long distance carriers overwhelmingly rely on incumbent local exchange carrier billing. In most instances, there exists no practical opportunity for long distance carriers to make alternative billing arrangements. Moreover, as the Commission well knows, it is a complex and extremely expensive process to "take back" one's long distance billing from local exchange carriers. MCI WorldCom, therefore, does not object to exempting small and medium carriers from the truth-in-billing rules, as long as the Commission makes clear that service providers (e.g., IXC's) relying on these carriers for billing services are not held liable for implementing the truth-in-billing rules, related to the affected end users.

³⁶ USTA Petition at 8, NTCA Petition at 2-3.

VI. Conclusion

In the Truth-in-Billing Order, the Commission adopted rules and requirements to ensure that carriers' charges, practices, classifications and regulations for and in connection with interstate services are just and reasonable, pursuant to Section 201(b) of the Communications Act, and noted that its requirements would help monitor the identity of their service provider, and thereby assist in detecting unauthorized conversions quickly. MCI WorldCom supports these goals. However, unlike the Commission, MCI WorldCom believes competition, not increased regulation, is the best means of advancing these consumer interests. Nevertheless, if the Commission believes that consumers require additional protection, then competitively neutral, economically efficient, and implementable guidelines should be promulgated.

Respectfully submitted,
MCI WORLDCOM, Inc.

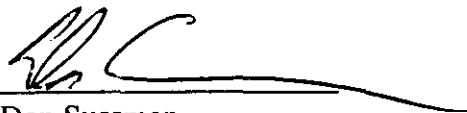


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September 14, 1999

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on September 14, 1999.

A handwritten signature in black ink, appearing to be 'DS' followed by a long horizontal stroke.

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CERTIFICATE OF SERVICE

I, Vivian Lee do hereby certify that copies of the foregoing Reply Comments In the Matter of Truth-in-Billing and Billing Format of MCI WorldCom, Inc. were sent via first class mail, postage paid, to the following on this 14th day of September, 1999.

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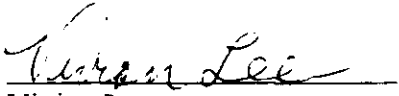
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